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Tax News and Industry Updates

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Health Coverage Status No Longer Required to be Reported on Individual Tax Returns

Cross References

- www.irs.gov

The IRS has announced that electronic and paper returns will continue to be accepted for processing in instances where a taxpayer does not indicate their health coverage status on their tax return.

Under IRC section 5000A, non-exempt U.S. citizens and legal residents are required to maintain minimum essential health insurance coverage. Failure to do so without a valid exemption may result in a penalty equal to the greater of $695 or 2.5% of income that exceeds the taxpayers filing threshold amount.

The IRS had announced earlier in the year that it would reject tax returns during processing in instances where the taxpayer did not provide information related to health coverage. However, on January 20, 2017, the President issued an executive order directing federal agencies to begin implementing plans for the full repeal of the Affordable Care Act (ACA), the public law which added IRC section 5000A to the code. The executive order directs federal agencies (which include the IRS) to exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the ACA that would impose a fiscal burden on any state or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of health care services, purchasers of health insurance, or makers of medical devices, products, or medications.

As a result of this executive order, the IRS has now announced that it will not reject an electronic or paper return in which the taxpayer does not provide information related to health coverage.

Note: While the IRS is not requiring the information to be provided on the return, the IRS said that legislative provisions of the ACA law are still in force until changed by Congress and that taxpayers remain required to follow the law and pay what they may owe. If taxpayers are still required by law to pay whatever tax they owe, this puts the tax preparer community in an uncomfortable predicament. Some software companies have announced that they are removing the e-file reject procedures where health coverage status information is left out. While this may allow tax preparers to leave out the information, there is confusion over the ethical responsibilities of licensed preparers who know a client failed to maintain minimum essential coverage and thus is required by law to pay the penalty. The executive order applies to federal agencies, not individual taxpayers or the tax professional community.

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C Corporations Qualify for Automatic 6-Month Extension

Cross References

- Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*

Under the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Public Law 114-41), the due date for filing calendar year C corporation returns was changed from March 15 to April 15. The automatic extension for filing calendar year C corporation returns was also changed from six months to five months. Thus, the September 15 extended deadline for filing calendar year C corporation returns remained the same under the old and new rules (six months from March 15 is September 15 and five months from April 15 is September 15). The new filing and extension deadlines are effective for calendar tax years beginning after December 31, 2015.

The revised IRS instructions for the 2016 Form 7004, however, do not change the extension deadline from six months to five months. Part I of Form 7004 which applies to C corporations with tax years ending December 31 states the automatic extension of time to file is six months (October 16, 2017 for 2016 calendar year C corporations).

On February 8, 2017, the IRS issued a statement on the instructions for Form 7004. The statement assures the tax professional community that the instructions for Form 7004 correctly reflects that calendar year C corporations are eligible for an automatic 6-month extension of time to file their income tax returns. Although IRC section 6081(b) provides a 5-month automatic extension period for calendar year C corporations, the IRS is granting a 6-month automatic extension under IRC section 6081(a) instead. This change is reflected in the new revision of the instructions for Form 7004.

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Notice to Employees Under New HRA Rules

Cross References

- Notice 2017-20

Under the 21st Century Cures Act enacted on December 13, 2016, an eligible employer may provide a qualified small employer health reimbursement arrangement (QSEHRA) to eligible employees without violating the market reform rules for group health plans under the Affordable Care Act (ACA). An eligible employer is generally one with fewer than 50 full-time equivalent employees that does not offer a group health plan to any of its employees. Under a QSEHRA, after an eligible employee provides proof that he or she has health insurance coverage, payments or reimbursements may be made to that employee tax-free for medical expenses incurred by the employee or a family member of the employee. Payments and reimbursements for any year cannot exceed $4,950 per employee or $10,000 per employee if the arrangement includes the employee's family members.

An employer is generally required to furnish a written notice to its eligible employees at least 90 days before the beginning of a year for which the QSEHRA is provided. If an employee is not eligible to participate as of the beginning of the year but later qualifies, the due date for furnishing a written notice is the date on which the employee is first eligible to participate. The written notice must include:

- A statement of the amount that would be the eligible employee's permitted benefit under the arrangement for the year,
- A statement that the eligible employee should provide the amount of the employee's permitted benefit to any health insurance exchange to which the employee applies for advance payment of the premium tax credit, and
- A statement that if the eligible employee is not covered under minimum essential coverage for any month, the employee may be liable for an individual shared responsibility payment under IRC section 5000A for that month and reimbursements under the QSEHRA may be taxable to the employee.

Under IRC section 6652(o), for employers that provide a QSEHRA to their eligible employees for a year beginning in 2017, there is no penalty for failing to timely furnish the initial written notice if the notice is furnished to eligible employees by March 13, 2017.

Transition relief. The IRS recently issued Notice 2017-20 that extended the March 13, 2017 deadline. The written notice is not required to be furnished until after the IRS furnishes new guidance that will specify a new deadline for providing the initial written notice. No penalties will be imposed for failure to provide the initial written notice before the extended deadline specified in that guidance. Employers that furnish the QSEHRA notice to their eligible employees before further guidance is issued may rely upon a reasonable good faith interpretation of the statute to determine the contents of the notice.

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Charitable Deduction Requires Acknowledgment Letter

Cross References

- *Mishan*, 147 T.C. No. 19, December 22, 2016

IRC section 170(f)(8)(A) says no deduction is allowed for any charitable contribution of $250 or more unless the taxpayer substantiates the gift by a contemporaneous written acknowledgment (CWA) from the donee organization. The CWA must state whether the donee supplied the donor with any goods or services in consideration for the gift.

The taxpayer in this case purchased real estate in New York City for $10 million in September of 2005. The taxpayer had planned to demolish the building on the property, but the Greenwich Village Society for Historic Preservation petitioned the New York City Landmarks Preservation Commission to designate the building an individual landmark. The building was then placed on the National Register of Historic Places.

On December 20, 2007, the taxpayer executed a historic preservation deed of easement in favor of the Trust for Architectural Easements (a 501(c)(3) organization). This deed granted the Trust a perpetual conservation easement over the north parcel of the property including the building. The charitable contribution was thus completed for federal tax purposes in 2007.

On May 14, 2008, the Trust sent the taxpayer an acknowledgment letter stating its receipt of the easement. This letter did not state whether the Trust had provided any goods or services to the taxpayer, or whether the Trust had otherwise given the taxpayer anything of value in exchange for the easement.

An appraisal of the property concluded that the fair market value before placement of the easement was $69,230,000, and that after the easement, it was worth $4,740,000. Thus, the appraisal concluded that the easement had reduced the property's value by $64,490,000.

The taxpayer filed its 2007 tax return and deducted $64,490,000 as a charitable contribution. On August 19, 2008, the Trust filed its Form 990, *Return of Organization Exempt From Income Tax,* for calendar year 2007. On that return, the Trust did not report receipt of a charitable contribution from the taxpayer, nor did it report whether it had provided any goods or services to the taxpayer in exchange for the easement.

The IRS audited the taxpayer and disallowed the charitable contribution deduction on the grounds that the taxpayer did not obtain an acknowledgement letter stating whether the donee supplied the donor with any goods or services in consideration for the gift.

On June 16, 2014, the Trust prepared an amended Form 990 for 2007 which summarized the easement donations it had received during 2007. The amended return added the statement that the Trust provided no goods or services to the taxpayer in consideration for its donation of the Historic Preservation Deed of Easement.

In court, the IRS did not dispute the taxpayer's assertion that the IRS accepted the Trust's amended return for filing.

The court pointed to the statutory language of IRC section 170(f)(8)(A) and noted that the acknowledgement letter qualifies as contemporaneous only if the donee provides it to the taxpayer on or before the earlier of the date on which the taxpayer files a return for the year in which the contribution was made, or the due date (including extensions) for filing such return. IRC section 170(f)(8)(D) says that subparagraph (A) shall not apply to a contribution if the donee organization files a return that includes the language required in the CWA, and that return is filed in accordance with such regulations as the Secretary may prescribe. The court said the question it must decide is whether the Trust's amended return in 2014 for tax year 2007 satisfies the donee return filing provision in IRC section 170(f)(8)(D).

The taxpayer argued that he satisfied the CWA requirement when the Trust filed an amended Form 990 which included the required language. The court said IRC section 170(f)(8)(D) provides that a donee organization may report information on such form and in accordance with such regulations as the Secretary may prescribe. The word "may" is used to express possibility or likelihood to express permission, or to express contingency. This means the IRS is granted permission to prescribe regulations governing this matter, but it does not mandate that the IRS do so. Congress intended that the IRS exercise its discretion in adopting regulations. Because of identity theft issues, the IRS concluded that in order to better protect donor privacy, Form 990 should not be used for donee reporting. The IRS received 38,000 responses from commenters concerning proposed regulations, most of whom had concerns about donee organizations collecting and maintaining taxpayer identification numbers for reporting purposes.

As a result, no final regulations have been adopted by the IRS allowing donee organizations to file a return to satisfy the CWA requirements. In the absence of these regulations, IRC section 170(f)(8)(D) has no operative effect. The requirements of IRC section 170(f)(8)(A) therefore remain fully applicable to the taxpayer's 2007 gift. The Trust's filing in 2014 of an amended return including the information required in the CWA has no effect on the taxpayer's requirement to obtain a CWA prior

to filing his return. The court ruled taxpayer's charitable contribution deduction was not allowed.

Father on Drugs Gets Dependency Exemption Over Grandmother

Cross References

- *Smyth,* T.C. Memo. 2017-29, February 7, 2017

The Tax Court Judges had a hard time explaining justice to the losing taxpayer in this court case decision. The taxpayer is a grandmother who provided a home and care for her two young grandchildren. On her 2012 tax return, she claimed them as her dependents which gave her a $5,300 federal tax refund. The IRS denied the amount of the refund because her unemployed son had already claimed the children on his tax return. The son then took his tax refund check and cashed it to spend on drugs.

For all of 2012, the taxpayer's adult son, his wife, and their two young children ages 2 and 4 years old lived with the taxpayer (grandmother) in her home. The grandmother's wages and Social Security benefits gave her a higher AGI than either her son or his wife. For 2012 the grandmother provided all the financial support for the household because her son did not work, and he was into dealing drugs while his wife stayed home and took care of the children. The grandmother claimed her grandchildren as dependents because her son told her that he and his wife were not going to file and that she should try to get back some of the money she had spent supporting his family.

After filing her return, the IRS sent a notice to the grandmother saying the grandchildren were not her qualifying children. The IRS denied the grandmother's claimed dependency exemption, Earned Income Credit, Child Tax Credit, and Head of Household filing status because her son had in fact filed a tax return claiming his children as dependents. He offered to write an affidavit in support of the grandmother's tax position and even prepared an amended 2012 return that deleted his claim to the children as his dependents. A copy of the amended return was given to IRS counsel two weeks before the Tax Court case went to trial.

In court, the grandmother testified that her son admitted he filed a return in order to get the refund for his drugs, and prepared an amended return to correct his previously filed original return. The court, however, pointed to the fact that handing an amended return to IRS counsel prior to trial is not considered filing an amended return because the amended return was not delivered to the proper IRS service center for processing. Therefore, the son and his wife did not properly file to give up their right to claim the children as their qualifying children. The Tax Court had previously ruled that mailing a return to the wrong service center is not officially a filed return unless and until it is received by the correct IRS service center. Since the grandmother's son and his wife did not properly give up their right to treat the children as their qualifying children, the tie-breaker rules gave the dependency exemption to the drug dealing son.

In conclusion, the Tax Court Judges wrote: "It is impossible for us to convince ourselves that the result we reach today, that the IRS was right to send money meant to help those who care for small children to someone who spent it on drugs instead, is in any way just. Except for the theory of justice that requires a judge to follow the law as it is, but explain his decision in writing so that those responsible for changing it might notice."